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INFO LOG-00	NP-00	AID-00	AMAD-00	ACQ-00	CIAE-00	DINT-00
DODE-00	DOYE-00	SRPP-00	DS-00	EB-00	EUR-00	FAAE-00
FBIE-00	VC-00	H-01	TEDE-00	INR-00	IO-00	LAB-01
L-00	VCE-00	AC-01	NSAE-00	OIC-02	OMB-01	OPIC-01
PA-00	PM-00	PRS-00	ACE-00	P-00	SP-00	SSO-00
STR-00	TRSE-00	USIE-00	PMB-00	DSCC-00	PRM-01	DRL-02
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FM AMEMBASSY HARARE  
TO SECSTATE WASHDC IMMEDIATE 8352  
INFO NSC WASHDC IMMEDIATE  
SOUTHERN AFRICAN DEVELOPMENT COMMUNITY  
AMEMBASSY NAIROBI

C O N F I D E N T I A L SECTION 01 OF 02 HARARE 000918

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SUBJECT: ZIMBABWE GOVERNMENT AND CHIEF JUSTICE REACH NEW AGREEMENT ON CHIEF JUSTICE'S DEPARTURE

REFS: A) HARARE 861, B) HARARE 644

CLASSIFIED BY CHARGE D'AFFAIRES EARL M. IRVING FOR  
REASONS: 1.5 (B) AND (D).

**¶1.** (U) A LOOMING SHOWDOWN BETWEEN ZIMBABWE'S EMBATTLED CHIEF JUSTICE ANTHONY GUBBAY AND THE GOVERNMENT OF ZIMBABWE (GOZ) WAS AVERTED MARCH 2 WHEN GUBBAY AGREED TO THE APPOINTMENT OF AN ACTING CHIEF JUSTICE, AND THE GOZ AGREED TO RETAIN GUBBAY'S JUDICIAL PRIVILEGES AND REFRAIN FROM DEMANDING THE RESIGNATION OF MORE JUSTICES. GUBBAY DEFIED GOVERNMENT ATTEMPTS TO REMOVE HIM EARLY WHEN HE SHOWED UP FOR WORK ON MARCH 1. JUSTICE MINISTER PATRICK CHINAMASA HAD SAID GUBBAY'S TERM WOULD END ON MIDNIGHT FEBRUARY 28 AND THAT HE WOULD HAVE TO MOVE OUT OF HIS OFFICES AND OFFICIAL RESIDENCE BY MARCH 9 (REF A). GUBBAY HAD TOLD CHINAMASA THAT GOVERNMENT'S INTENTION TO APPOINT AN ACTING CHIEF JUSTICE WAS ON DUBIOUS LEGAL GROUNDS AND IN CONTRAVENTION OF GUBBAY'S ORIGINAL TERMS OF DEPARTURE AS AGREED ON FEBRUARY 2 (REF B).

**¶2.** (C) ACCORDING TO MORDECAI MAHLANGU, GUBBAY'S ATTORNEY, THE CHIEF JUSTICE "GOT MORE THAN EXPECTED" FROM THE NEW AGREEMENT AND IS REASONABLY HAPPY WITH THE TERMS OF HIS DEPARTURE. GUBBAY WILL REMAIN AS CHIEF

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JUSTICE THROUGH JUNE 30 (AS ORIGINALLY AGREED), AND WILL GO ON LEAVE FROM NOW UNTIL HE RETIRES. GUBBAY WILL RETAIN HIS OFFICIAL VEHICLE AND OFFICES UNTIL JUNE 30, AND HIS OFFICIAL RESIDENCE UNTIL DECEMBER 31, MAHLANGU TOLD US. GUBBAY WILL ALSO BE PAID HIS NORMAL SALARY DURING HIS LEAVE, AND WILL RECEIVE HIS NORMAL PENSION AFTER RETIREMENT. THESE WERE PARAMOUNT CONCERN OF GUBBAY, ACCORDING TO HIS ATTORNEY, BECAUSE SOME JUSTICES PERCEIVED AS ANTI-GOVERNMENT WERE DRIVEN INTO POVERTY AFTER THEIR RETIREMENT.

**¶3.** (C) THERE ARE TWO IMPORTANT POINTS OF THE AGREEMENT THAT WERE NOT PART OF THE ORIGINAL TERMS OF DEPARTURE, ACCORDING TO MAHLANGU. THEY ARE: 1) THE GOZ HAS AGREED NOT TO ACT UNLAWFULLY TOWARD THE REMAINING JUSTICES, I.E. NOT TO FORCE THEIR EARLY RETIREMENT THROUGH ILLEGAL MEANS (COMMENT: PRESUMABLY THIS MEANS THE GOZ COULD STILL APPOINT TRIBUNALS TO INVESTIGATE THE JUSTICES, AND IT PROBABLY WILL. END COMMENT.), AND 2) GUBBAY WILL BE PERMITTED TO ACT ON BEHALF OF OR DEFEND THE REMAINING JUDGES WHILE HE REMAINS IN OFFICE. ACCORDING TO THE

CONSTITUTION, ONLY THE CHIEF JUSTICE CAN RECOMMEND TO THE PRESIDENT THAT A TRIBUNAL BE SET UP TO INVESTIGATE THE REMOVAL OF A JUDGE. (COMMENT: THE CONSTITUTION MAKES NO PROVISION FOR AN ACTING CHIEF JUSTICE'S POWERS IN RECOMMENDING A TRIBUNAL, NOR IS IT CLEARLY DEFINED IN GUBBAY'S AGREEMENT. THIS IS LIKELY TO BE A MAJOR POINT OF CONTENTION IN THE FUTURE. END COMMENT.) GUBBAY WILL ALSO REMAIN A MEMBER OF THE JUDICIAL SERVICE COMMISSION, WHICH OVERSEES THE JUDICIARY AND APPROVES APPOINTMENTS, AND HE COULD INTERVENE ON BEHALF OF OTHER JUDGES THROUGH

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THIS BODY. IF THE GOZ BREACHES ANY OF THESE PROVISIONS, THE WHOLE AGREEMENT WILL BECOME NULL AND VOID, THE ATTORNEY SAID.

¶4. (C) AS PART OF THE AGREEMENT, GUBBAY RELENTED ON THE GOZ'S DEMAND TO APPOINT AN ACTING CHIEF JUSTICE WHILE HE IS ON LEAVE, GUBBAY'S ATTORNEY TOLD US. MAHLANGU SAID MUGABE ALMOST CERTAINLY WILL APPOINT THE ZANU-PF-FRIENDLY GODFREY CHIDYAUSIKU AS ACTING CHIEF JUSTICE IN THE VERY NEAR FUTURE. GUBBAY EVENTUALLY AGREED TO THE APPOINTMENT OF AN ACTING CHIEF JUSTICE BECAUSE, AS THE LAW STIPULATES, ALL CONSTITUTIONAL DECISIONS MUST BE MADE UNANIMOUSLY BY THE FIVE-JUSTICE BENCH, AND CHIDYAUSIKU CANNOT MAKE IMPORTANT RULINGS WITHOUT THE CONSENT OF THE REMAINING FOUR INDEPENDENT JUSTICES. FURTHERMORE, ALL APPEAL DECISIONS MUST BE MADE BY A MINIMUM OF THREE JUSTICES, ACCORDING TO THE CONSTITUTION. (COMMENT: ASSUMING AN ACTING CHIEF JUSTICE IS PLACE, GUBBAY WILL NO LONGER HEAR JUDICIAL CASES OR WEIGH IN ON RULINGS. END COMMENT.)

¶5. (C) AS AN ADDED ELEMENT OF DRAMA, SELF-STYLED FARM OCCUPATIONS LEADER JOSEPH CHINOTIMBA PAID GUBBAY A VISIT ON MARCH 1 AT THE LATTER'S SUPREME COURT OFFICES. ACCORDING TO MAHLANGU, CHINOTIMBA SOMEHOW GOT PAST

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	LAB-01	L-00	VCE-00	AC-01	DCP-01	NSAE-00	OIC-02
	OMB-01	OPIC-01	PA-00	PM-00	PRS-00	ACE-00	P-00
	SP-00	SSO-00	STR-00	TRSE-00	USIE-00	PMB-00	DSCC-00
	PRM-01	DRL-02	G-00	NFAT-00	SAS-00	SWCI-00	/011W
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SECURITY CHECKPOINTS AND ENTERED THE SUPREME COURT BUILDING LOBBY. FROM AN INTERNAL PHONE, HE CALLED GUBBAY AND DEMANDED THAT HE GIVE HIM THE KEYS TO HIS OFFICIAL MERCEDES. GUBBAY REFUSED, AND CHINOTIMBA WAS EVENTUALLY REMOVED FROM THE BUILDING WITHOUT INCIDENT. WHEN THE CHIEF JUSTICE MENTIONED THIS INCIDENT TO JUSTICE MINISTER CHINAMASA, THE MINISTER RESPONDED THAT HE DID NOT HAVE ANY CONTROL OVER CHINOTIMBA AND THAT HE MUST HAVE BEEN ACTING ON HIS OWN.

¶6. (C) COMMENT: THIS LAST MINUTE AGREEMENT BETWEEN THE GOZ AND CHIEF JUSTICE IS PROBABLY THE BEST THAT BOTH COULD HAVE EXPECTED UNDER THE CIRCUMSTANCES. GUBBAY

AVOIDS A NASTY CONFRONTATION AND POTENTIALLY BEING THROWN OUT ON THE STREETS, AND THE GOZ AVOIDS AN EVEN GREATER INTERNATIONAL UPROAR OVER ITS BRUTISH HANDLING OF GUBBAY'S DEPARTURE. MORE LEGAL BATTLES COULD BE ON THE HORIZON, HOWEVER, BECAUSE THE LANGUAGE OF THE AGREEMENT IS NOT SPECIFIC ON "UNLAWFUL" GOVERNMENT ACTIONS TOWARD THE JUDICIARY, AND THE CONSTITUTION IS VERY BROAD ON THE ESTABLISHMENT OF TRIBUNALS TO CONSIDER THE REMOVAL OF JUSTICES. THE GOZ IS EAGER TO HAVE ITS PROTEGE CHIDYAUSIKU BEGIN TURNING BACK THE LEGAL ACTIONS THAT HAVE HINDERED ITS "FAST-TRACK" RESETTLEMENT EXERCISE, AND IN ALL LIKELIHOOD WILL NOT LET A PIECE OF PAPER SIGNED BY GUBBAY AND CHINAMASA STAND IN ITS WAY.

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END COMMENT.

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